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PART 5GUIDELINES ON CONDUCTING AN ADMINISTRATIVE BOARD

A. Hearing Procedure. If a respondent requests a hearing before an Administrative Board, the following procedures are applicable:

1. Composition

a. The convening authority shall appoint to the Administrative Board at least three experienced commissioned, warrant, or noncommissioned officers. Enlisted personnel appointed to the Board shall be in grade E-7 or above, and shall be senior to the respondent. At least one member of the Board shall be serving in the grade of O-4 or higher, and a majority shall be commissioned or warrant officers. The senior member shall be the president of the Board. The convening authority also may appoint to the Board a nonvoting recorder. A nonvoting legal advisor may be appointed to assist the Board.

b. If the respondent is an enlisted servicemember of a Reserve component or holds an appointment as a Reserve commissioned or warrant officer, the Board shall include at least one Reserve officer as a voting member. Additionally, all Board members will be commissioned officers if an Under Other Than Honorable Characterization from the Reserve component may be authorized. (See 10 U.S.C., Section 12685 (reference (b))). Voting members shall be senior to the respondent's reserve grade (See 10 U.S.C. Section 266 (reference (b))).

c. The convening authority shall ensure that the opportunity to serve on Administrative Boards is given to women and minorities. The mere appointment or failure to appoint a member of such a group to the Board, however, does not provide a basis for challenging the proceeding.

d. The respondent may challenge a voting member of the Board or the legal advisor, if any, for cause only.

2. Presiding Officer. The president shall preside and rule finally on all matters of procedure and evidence, but the rulings of the president may be overruled by a majority of the Board. If appointed, the legal advisor shall rule finally on all matters of evidence and challenges except challenges to him or herself.

3. Witnesses

a. The respondent may request the attendance of witnesses in his or her own behalf at the hearing.

b. The respondent may submit a written request for temporary duty (TDY) or invitational travel orders for witnesses. Such a request shall contain the following matter:

(1) A synopsis of the testimony that the witness is expected to give.

(2) An explanation of the relevance of such testimony to the issues of separation or characterization.

(3) An explanation as to why written or recorded testimony would not be sufficient to provide for a fair determination.

c. The convening authority may authorize expenditure of funds for production of witnesses only if the presiding officer (after consultation with a judge advocate) or the legal advisor (if appointed) determines that:

(1) The testimony of a witness is not cumulative;

(2) The personal appearance of the witness is essential to a fair determination on the issues of separation or characterization;

(3) Written or recorded testimony will not accomplish adequately the same objective;

(4) The need for live testimony is substantial, material, and necessary for a proper disposition of the case; and

(5) The significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the cost of producing the witness, the timing of the request for production of the witness, the potential delay in the proceeding that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

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d. If the convening authority determines that the personal testimony of a witness is required, the hearing will be postponed or continued if necessary to permit the attendance of the witness.

e. The hearing shall be continued or postponed to provide the respondent with a reasonable opportunity to obtain a written statement from the witness if a witness requested by the respondent is unavailable in the following circumstances:

(1) When the presiding officer determines that the personal testimony of the witness is not required;

(2) When the commanding officer of a military witness determines that military necessity precludes the witness' attendance at the hearing; or

(3) When a civilian witness declines to attend the hearing.

f. Subsection A3e(3), does not authorize a Federal employee to decline to appear as a witness if directed to do so in accordance with applicable procedures of the employing agency.

4. Record of Proceedings. In cases where the Board recommends separation, the record of the proceedings shall be kept in summarized form unless a verbatim record is required by the separation authority. In cases where the Board recommends retention, a record of the proceedings is optional unless required by the separation authority. However, a summarized or verbatim record shall be prepared in any case where the Board recommends retention and the separation authority elects to forward the matter to the Secretary of the Navy under subsection C2b(2) of part 6. The Board reporter shall retain all materials necessary to prepare a transcript should the separation authority elect to forward the case to the Secretary of the Navy. In all cases, the findings and recommendations of the Board shall be in verbatim form.

5. Presentation of Evidence. The rules of evidence for courts-martial and other judicial proceedings are not applicable before an Administrative Board. Reasonable restriction shall be observed, however, concerning relevancy and competency of evidence. The president of the board has full authority to decline to accept evidence whose probative value is outweighed by the prejudicial effect on the respondent, or which would cause unnecessary embarrassment to a witness or victim involved in the case.

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6. Rights of the Respondent

a. The respondent may testify in his/her own behalf, subject to the provisions of article 31(a), UCMJ (reference (d)).

b. At any time during the proceedings, the respondent or counsel may submit written or recorded matter for consideration by the Board.

c. The respondent or counsel may call witnesses on behalf of the respondent.

d. The respondent or counsel may question any witness who appears before the Board.

e. The respondent or counsel may present argument prior to when the Board closes the case for deliberation on findings and recommendations.

7. Findings and Recommendations

a. The Board shall determine its findings and recommendations in closed sessions. Only voting members of the Board shall be present.

b. The Board shall determine whether each allegation in the notice of proposed separation is supported by a preponderance of the evidence.

c. The Board shall then determine under the guidance in section A of part 2 whether the findings warrant separation with respect to the reason for separation set forth in the Notice. If more than one reason was contained in the Notice, there shall be a separate determination for each reason.

d. The Board shall make recommendations on the following:

(1) Retention or separation. The Board shall recommend retention or separation.

(2) Suspension of separation. If the Board recommends separation, it may recommend that the separation be suspended in accordance with section B of part 2. The recommendation of the Board as to suspension is not binding on the separation authority.

(3) Characterization of Service or Description of Separation. If separation or suspended separation is recommended, the Board shall recommend a characterization of service or description of separation as authorized in part 1 (Reasons for Separation) in accordance with the guidance in section C of part 2.

(4) Transfer to the Ready Reserve. The Board shall make a recommendation as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation. The recommendation must be consistent with the limitations in paragraph 5 of this instruction. This option applies to cases involving separation from active duty or from the Selected Reserve. Part 8 is applicable if the recommendation for retention in the Ready Reserve is approved.